CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 253.

HANKS DENTAL ASSOCIATION

vs.

INTERNATIONAL TOOTH CROWN COMPANY.

A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED APRIL 7, 1906.

(18,885.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 13, 1903.

1 United States Circuit Court of Appeals, Second Circuit.

HANKS DENTAL ASSOCIATION, Plaintiff in Error, *vs.* INTERNATIONAL TOOTH CROWN COMPANY, Defendant in Error.	Action at Law. Before Wallace and Coxe, Circuit Judges.

This cause comes here upon a writ of error for the review of the judgment of the circuit court for the southern district of New York, entered upon the verdict of a jury in favor of the defendant in error, The International Tooth Crown Company sustaining the validity of a patent and awarding damages for infringement. Upon examination of the record it appears that the sole evidence of infringement was found in the deposition of the president of The Hanks Dental Association, the plaintiff in error, taken pursuant to an order of the circuit court under section 870 *et seq.* of the Code of Civil Procedure of the State of New York, the defendant in error contending the examination of a party before trial, if permitted by the law of the State, is authorized by act of Congress of March 9, 1892. (27 Stat. L., page 7.)

The taking of the deposition was objected to at every stage and when offered in evidence at the trial it was again duly ob-
2 jected to and to its reception the plaintiff in error duly excepted.

Whether this practice is warranted or not is the question upon which we desire the instructions of the Supreme Court.

Question Certified.

Upon the facts above set out the question of law concerning which the court desires the instruction of the Supreme Court is:

Was the order of the circuit court directing the president of The Hanks Dental Association, the defendant in that court, to appear before a master or commissioner appointed pursuant to the provisions of section 870 *et seq.* of the Code of Civil Procedure of the State of New York valid and authorized under the act of March 9, 1892?

In accordance with the provisions of section 6 of the act of March 3, 1891, establishing courts of appeal etc., the foregoing question of law is by the circuit court of appeals for the second circuit hereby certified to the Supreme Court.

March 12th, 1903.

WM. J. WALLACE,
Circuit Judge.
ALFRED C. COXE,
Circuit Judge.

3 [Endorsed:] United States circuit court of appeals, second circuit. Hanks Dental Association, plaintiff in error, vs. International Tooth Crown Company, defendant in error. Certificate for instructions. United States circuit court of appeals, second circuit. Filed Mar. 12 1903 William Parkin, clerk.

4 UNITED STATES OF AMERICA, }
Southern District of New York. }

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit do hereby certify that the foregoing certificate was filed and entered of record in my office on the 12th day of March, 1903, and as directed by the judges of said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

New York, March 13, 1903.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

5 [Endorsed:] United States circuit court of appeals, second circuit. Hanks Dental Ass'n *v.* International Tooth Crown Co. Certificate.

Endorsed on cover: (Certificate.) File No. 18,885. U. S. C. C. of appeals, 2nd circuit. Term No. 253 Hanks Dental Association vs. International Tooth Crown Company. Filed April 7th, 1903.